

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL

In the Matter of

Implementation of Section 309(j)
of the Communications Act -
Competitive Bidding

PP Docket No. 93-253

DOCKET FILE COPY (ORIGINAL)

COMMENTS TO BET PETITION FOR WAIVER

Pursuant to Section 1.45 of the Commission's rules, Gulf Telephone Company, Hopper Telecommunications, Inc., Millry Telephone Company, Inc., Moundville Telephone Company, Inc., Pinebelt Telephone Company, Inc., and Ragland Telephone Company, Inc. ("Joint Commenters") hereby submit comments on the Petition for Waiver filed by BET Holdings, Inc. ("BET") on April 24, 1995.¹ As discussed below, Joint Commenters oppose BET's request for a waiver of the Personal Communications Services ("PCS") auction bidding credit and installment payments rules because: (1) BET's waiver request is defective due to the fact that BET gave no indication of the extent to which it needs a waiver of the \$40 million small business cap; and (2) when the Commission set the \$40 million small business cap, it "drew a bright line in the sand" for all potential PCS auction participants to see and erasing that line for BET will cause many other potential participants to possibly qualify as small businesses.

Joint Commenters are rural telephone companies. Each of the Joint Commenters is also a women owned and controlled small business, except Millry Telephone Company, Inc., which, through affiliates, has agreed to invest in a PCS applicant in which the control group will qualify as a women owned small business. Joint Commenters intend to participate in the upcoming PCS

¹ Joint Commenters are concurrently filing a Motion to File Late-Filed Comments.

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C block (“entrepreneurs’ block”) auction with the benefit of the small business and women preferences accorded them by Congress^{2/} and the Commission.^{3/} As participants in the auction, they would be unfairly disadvantaged if BET, a company that does not qualify as a small business, is given the same benefits conferred upon small businesses (i.e., an increased bidding credit and a longer installment payment period) as they will receive. Thus, Joint Intervenors have standing to file their Comments.

Under Section 24.712 of the Commission’s rules, women and minority owned businesses that successfully bid on entrepreneurs’ block licenses will receive a 15 percent bidding credit. That bidding credit is increased an additional ten percent for any women and minority owned businesses that also qualify as a “small business,” i.e., a business that, together with its affiliates, has average annual gross revenues that have not exceeded \$40 million for the preceding three years. See 47 C.F.R. §§ 24.712(a), 24.720(b). Further, women and minority owned businesses will be permitted to make interest-only payments on their licenses during the first three years of the license period pursuant to an installment payment plan. Id. at § 24.711(b). The interest-only payment plan is extended to six years for any women and minority owned businesses that also qualify as a small business. Id.

BET, as a minority owned and controlled company, will receive a 15 percent bidding credit and will be permitted to make interest-only payments for the first three years of its PCS license period. However, because BET’s average annual gross revenues have exceeded \$40

^{2/} See Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(a), 107 Stat. 312, 387 (1993), codified at 47 U.S.C. § 309(j).

^{3/} 47 C.F.R. §§ 24.709 - 24.720. See Implementation of Section 309(j) of the Communications Act: Competitive Bidding, Fifth Report and Order, 9 FCC Rcd 5532 (1994), recon., Fifth Memorandum Opinion and Order, 10 FCC Rcd 403 (1994).

million over the past three years, BET is not a small business. Thus, BET does not qualify for the additional ten percent bidding credit that is conferred upon small businesses; nor does BET qualify to take advantage of the extended period to make interest-only payments that is granted to small businesses.

Although BET admits that it does not qualify as a small business because its average annual gross revenues have exceeded \$40 million over the past three years, BET fails to give any indication of how far it exceeds the benchmark. The Commission does not know whether BET is \$1 million, \$8 million, or \$80 million over the benchmark. Thus, the Commission is being asked to waive its rules that were designed to help small businesses for a business that admittedly is not a small business and could very well be anything but small. The BET waiver request is, therefore, procedurally defective. The Commission cannot make a reasoned analysis of whether BET deserves a waiver of a rule that was designed to benefit small businesses if it has no indication of whether BET almost qualifies as a small business or whether BET is at the upper end of those entities that would qualify to participate in the C block auction.

BET claims that it deserves the benefits afforded small businesses because it is a minority-owned business, and that by giving it benefits that were reserved for small businesses, the Commission would be furthering its goal of increasing minority participation in PCS. It is true that a Commission goal is to increase minority involvement in PCS. BET, as a minority owned and controlled company that qualifies to bid in the C block auction, is a beneficiary of the Commission's minority policies and rules. The Commission also promulgated rules and policies to benefit small businesses. BET is not a small business. Thus, BET should not be permitted to take advantage of rules and policies that were never meant to benefit companies like BET.

BET's claim that it should be given advantages reserved for small businesses simply because it is

a minority business is without merit. If Congress and the Commission believed that all minority businesses, regardless of how large they are, should be given a 25 percent bidding credit and a six-year period in which to make interest-only payments, the rules would have provided for such benefits. In fact, the Commission determined that only small businesses deserve the additional bidding credit and extended installment payment plan.

When the Commission established the \$40 million dollar benchmark to determine whether an entity qualifies as a small business, it drew a bright line in the sand for all potential PCS bidders to see. Either an entity qualifies as a small business or it does not; there is no gray area. Now, BET wants to wipe out that bright line. A grant of BET's waiver would be tantamount to altering the rules without the proper rule making proceeding. Further, if the Commission were to grant BET's waiver request, it would be obligated to grant the waiver request of all similarly situated companies. Such was not the intent of the Commission when it designed rules and policies to benefit small businesses.

In sum, BET is a minority owned and controlled company. As such, BET will receive a 15 percent bidding credit on its PCS license and will be permitted to make interest-only payments for three years. The Commission has clearly detailed what it takes to be considered a small business in order to take advantage of the benefits conferred upon small businesses: the entity, together with its affiliates, cannot have had average annual gross revenues of more than \$40 million for the preceding three years. BET does not qualify as a small business. Grant of BET's waiver request would destroy the clarity of the benchmark and would make it possible for other potential PCS participants who do not qualify as small businesses to qualify as such. Thus, grant of BET's waiver request should be denied.

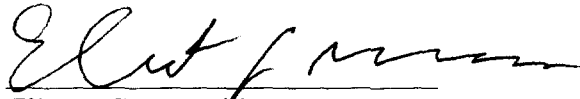
WHEREFORE, for the above-stated reasons, Joint Commenters respectfully request that the Commission deny BET's Petition for Waiver.

Respectfully submitted,

GULF TELEPHONE COMPANY
HOPPER TELECOMMUNICATIONS
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MILLRY TELEPHONE COMPANY, INC.
MOUNDVILLE TELEPHONE COMPANY, INC.
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Dated: May 22, 1995

CERTIFICATE OF SERVICE

I, Ana Julissa Ayala, a secretary in the law firm of Fisher Wayland Cooper Leader & Zaragoza L.L.P. do hereby certify that on this 22nd of May 1995, a copy of the foregoing **"COMMENTS TO BET PETITION FOR WAIVER"** was sent by U.S. first class mail, postage prepaid to:

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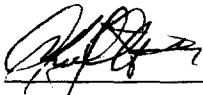
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A handwritten signature in dark ink, appearing to read 'Ana Julissa Ayala', written over a horizontal line.

Ana Julissa Ayala

*Hand Delivered

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